

REMARKS

The Petition to Withdraw Holding of Abandonment stands as dismissed.
Reconsideration of the Decision is respectfully requested.

The Decision states:

However, the Notice of Abandonment mailed to the Milpitas address is not logged in even though it is identified through inter-office communications as having been received on March 22, 2001. The evidence provided to date suggests possible lapses in coverage and confusion in-house. Therefore, the evidence is not sufficient to overcome the presumption of receipt, practitioner's statements to the contrary notwithstanding. The practitioner is requested to provide further clarification regarding the docketing of Office communications in regards to the nature of the docket record provided. Specifically, why that record should be considered accurate when it omits the entry of other papers received.

In response, Applicant respectfully submits that the docket record clearly shows that the Notice of Abandonment was received, acknowledged, and acted upon. For example the docket record states:

Thu, Mar 22, 2001 -Log – Sent reminder to Attorney – Hi Pete, F.Y.I.
Sent automatic e-mail to Duke Yee office.:

Krista, we never received a request for clarification (on the office action response mailed 3-24-01) that you speak of, from the Examiner (who you spoke to in February). We did now receive a notice of abandonment for failure to reply to an office letter dated 5-june 2000. Apparently, we had never received this office letter. (I was on maternity leave from March 3 until September 2000) but my substitutes would have docketed it into the database it come. I will fax you a copy of notice of abandonment needing attention. Regards, maria [emphasis added]

This entry in the docket record clearly acknowledges receipt of the Notice of Abandonment. Besides the initial entries in February detailing communications concerning the indication that the application may become abandoned, the Notice of Abandonment is addressed in nine separate entries in the docket record.

There are no rules governing how a practitioner must log entries in a docket record, so long as the docket record is complete. Applicant submits that the docket record, as attached to the Petition, illustrates a complete record of the correspondence

occurring in the subject application. For example, the docket record includes four separate entries concerning the First Office Action (Jan 04, 2000; Jan 06, 2000; Jan 06, 2000; Jan 06, 2000) and three separate entries concerning the Response to 1st Non Final Office Action (Mar 23, 2000; Mar 23, 2000; Mar 24, 2000). As stated above, the docket record also includes nine separate entries concerning the Notice of Abandonment (Mar 22, 2001; Mar 22, 2001; Mar 23, 2001; Mar 23, 2001; Sep 20, 2001; Sep 20, 2001; Sep 20, 2001; Oct 02, 2001; Oct 02, 2001). The details regarding the Notice of Abandonment and how the Notice of Abandonment was acted upon are thoroughly documented. However, the docket record includes no entries acknowledging receipt of the Office Action allegedly mailed 5 June 2000. In fact, the docket record expressly states that Office letter was never received. The thorough documentation regarding the First Office Action, the Response to the First Office Action, and the Notice of Abandonment and the complete lack of any entry acknowledging receipt the Office Action in question is further evidence that the Office Action was not received.

Regarding the alleged "confusion in-house," any such confusion may have been caused by the indication that the application was on the Examiner's abandonment list and the subsequent receipt of the Notice of Abandonment for failure to respond to an Office Action that was never received. Hence, the Notice of Abandonment is identified in inter-office communications as the practitioner attempted to determine the events that led to the apparent abandonment of the application. Applicant believes, however, that the docket record itself is not confusing.

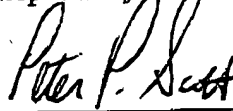
Even though the Decision states that a requirement for a Terminal Disclaimer is being held in abeyance, Applicant is submitting a Terminal Disclaimer herewith to advance prosecution to the mutual benefit of the Applicant and the Patent and Trademark Office. Furthermore, Applicant has obtained a copy of the Office Action from the Examiner by facsimile on July 11, 2002, and is submitting herewith a Response to the Office Action addressing the one objection to the specification that was inadvertently overlooked in the previous response.

Regarding the delay, the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. Applicant wishes to advance prosecution and has taken the necessary steps

to do so through the filing of the Terminal Disclaimer and the Response to Office Action. Therefore, Applicant requests that the Petition for Withdrawal of Holding of Abandonment be granted, the Abandonment be withdrawn, and the Response to Office Action be forwarded to the Examiner.

DATE: 12 August 2002

Respectfully submitted,



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